



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2019-0015; Notice 2]

Arai Helmet, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Arai Helmet, Inc. (Arai), has determined that certain Arai Corsair X Mamola Edge motorcycle helmets, do not comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 218, *Motorcycle Helmets*. Arai filed a noncompliance report dated March 6, 2019, and later amended it on March 28, 2019. Arai subsequently petitioned NHTSA on March 28, 2019, and later amended its petition on July 9, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of Arai's petition.

FOR FURTHER INFORMATION CONTACT: Paloma Lampert, Office of Vehicle Safety Compliance, NHTSA, (202) 366-5299, Paloma.Lampert@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Overview: Arai has determined that certain Arai Corsair X Mamola Edge helmets, size small, do not comply with paragraph S5.6.1(b) of FMVSS No. 218, *Motorcycle Helmets* (49 CFR 571.218). Arai filed a noncompliance report dated March 6, 2019, and later amended it on March 28, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Arai subsequently petitioned NHTSA on March 28, 2019, and later amended its petition on July 9, 2020, for an exemption from the notification and remedy requirement of 49 U.S.C Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor

vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of Arai's petition was published with a 30-day public comment period on September 12, 2019, in the **Federal Register** (84 FR 48211). One comment was received. To view the petition, all supporting documents, and the comment received from the public, log onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2019-0015."

II. Equipment Involved: Approximately 24 Arai Corsair X Mamola Edge helmets, size small, manufactured between June 29, 2018, and January 31, 2019, are potentially involved.

III. Noncompliance: Arai explains that the noncompliance is that the discrete size label may not be permanently attached as required by S5.6.1(b) of FMVSS No. 218.

IV. Rule Requirements: Paragraph S5.6.1(b) of FMVSS No. 218, provides the requirements relevant to this petition. Each helmet must be labeled permanently and legibly, in a manner such that the label can be read easily without removing padding or any other permanent part, with "discrete size."

V. Summary of Arai's Petition: The following views and arguments presented in this section, "V. Summary of Arai's Petition," are the views and arguments provided by Arai and do not reflect the views of the agency. Arai describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Arai submits the following reasoning:

1. Arai states that the subject motorcycle helmets comply with all the performance requirements under FMVSS No. 218 and all labeling requirements of FMVSS No. 218, except that the discrete size label does not appear to be permanent as required by paragraph S5.6.1(b). Arai cites FMVSS No. 218, which says the discrete size means "a numerical value that corresponds to the diameter of an equivalent circle

representing the helmet interior in inches (± 0.25 inch) or to the circumference of the equivalent circle in centimeters (± 0.64 centimeters).”

2. Arai believes NHTSA’s reason for requiring the helmet’s discrete size is primarily to determine the appropriate headform for conducting the performance testing of paragraph S6.1 of FMVSS No. 218. In promulgating the discrete size label, Arai cites the agency as saying that it added the discrete size requirement to the standard to “eliminate enforcement problems.” *See* 73 FR 57297, 57304 (October 2, 2008). Arai says that the agency had previously permitted generic head sizes on helmet labels, however, they lacked the precision the agency desired for enforcing the helmet standard, raising potential problems with the objective requirements of 49 U.S.C. § 30111(a). Arai says that NHTSA explained its reasoning in the rulemaking for specifying the discrete size and cited the following:
 - a. The reason for this is to eliminate enforcement problems that arise when helmets are labeled only with a generic size specification (e.g. Small, Medium, or Large).
 - b. Enforceability problems can arise because while S6.1 specifies which headform is used to test helmets with a particular “designated discrete size or size range,” a helmet’s generic size may not correspond to the same size ranges that the agency uses to determine which headform to use for testing.
3. Arai states that in the final rule, NHTSA further elaborated that defining the discrete size “would have two benefits.” First, it would provide certainty as to the headform on which the helmet would be tested by NHTSA, thereby, improving the enforceability of the standard. Second, it would provide more precise information to customers. Arai further notes that the requirement would in no way preclude manufacturers from specifying a generic size in addition to the discrete size on the size label.

4. Arai believes that the primary reason for requiring the discrete size is related to enforceability of the performance tests and that a label that is present on the helmet at the time of NHTSA's testing, but that may not be permanently attached to the helmet does not expose the user of the noncompliant helmet to a "significantly greater risk" than to a user of a compliant helmet.
5. Arai states that NHTSA tested the subject Arai Helmet under FMVSS No. 218, and that the testing demonstrated that these helmets meet the performance standards. The discrete label on the helmet tested by NHTSA permitted the Agency to select the correct headform for the size small Arai Corsair-X helmet that was tested.
6. Arai believes that in the FMVSS No. 218 final rule, NHTSA explained that while the discrete label would provide "more precise information to customers," NHTSA acknowledged that generic sizes could also be used on helmets. Arai believes this indicates that the value to customers of a "more precise" helmet size serves limited safety benefits. Arai says that NHTSA did not claim the discrete size served a safety purpose, but stated that "discrete size labeling requirements will both improve customer information regarding the size of the helmet and avert potential enforceability problems."¹
7. Arai states that the noncompliance arose from the nonpermanency of the label, not the content and that the label would be present, at a minimum, to the first purchaser. Further, Arai states that another label showing the discrete size of the helmet is sewn into a tag in the headliner; moreover, the helmet's packaging provides the size information and secondhand purchasers could try on the helmet to determine whether it properly fits; accordingly, the consumer would have sizing information available to determine the correct helmet size for purchase.

1. ¹See 76 FR 28145 (May 13, 2011).

8. Arai says that in a petition related to a noncompliance that resulted from a goggle strap potentially obscuring the DOT label of a motorcycle helmet, NHTSA agreed that the noncompliance was inconsequential to motor vehicle safety. *See* 79 FR 47720. Arai went on to write that NHTSA reasoned that “the presence of the strap holder which obscures the DOT label does not affect the helmet's ability to protect the wearer in the event of a crash if that helmet meets or exceeds the performance requirements of FMVSS No. 218.” Arai believes the same reasoning applies here as well.
9. Arai stated their belief that the helmets’ potential failure to permanently provide “customer information” does not pose a “significantly greater risk” to the user of a noncompliant helmet compared to the user of a compliant helmet. Arai says they are not aware of any warranty claims, field reports, customer complaints, legal claims, or any incidents or injuries related to the subject noncompliance.

In response to a request from NHTSA, Arai submitted a supplement to the subject petition to include additional information regarding how consumers would identify helmets subject to a potential recall in the event of a future performance-related concern. Arai describes the general approach it would use in the event a recall becomes necessary to address a future safety concern.

Arai explains that to assist consumers in identifying Arai helmets, every Arai helmet is labeled with a unique serialized number on a Snell label,² which is cross-referenced to the helmet model, the date of manufacture, the outer shell size, the corresponding fit of the helmet, and the distributor to whom Arai sold the helmet – or for direct-consumer sales, the customer information for the first retail sale. Further, Arai states that while NHTSA does not require Snell

² Arai states that it certifies its helmets through the Snell Foundation, a not-for-profit organization dedicated to research, education, testing, and development of helmet safety standards. Additional information about the Snell Foundation can be found at <https://www.smf.org/about>

certification and the Snell label, these labels are permanently affixed to the helmet and removing these labels leaves evidence of tampering.

In the event of a recall, Arai would direct consumers to the Snell label to determine whether a specific helmet was subject to the recall. Depending on the scope and context of the recall, Arai may also rely on other information on the helmet to guide consumers. This additional information that is on every helmet includes the helmet model and style, the graphics package on the shell of the helmet, the date code laser-etched into the chinstrap's D-ring, and the information listed on the label sewn into the headliner.³ To the extent necessary, Arai would provide this information in the owner notification letter required by 49 Part 577 to assist consumers. For example, photographs of the Snell label and other relevant identifying information would be included to assist consumers. Arai would also provide a customer service line staffed by agents prepared to explain to consumers how to locate the relevant identifying information.

With respect to equipment such as motorcycle helmets, the scope of any potential recall would be determined based on identifying information available to the consumers. If any Arai helmet is involved in a future recall, Arai would follow the general approach explained above, looking first to the serial number on the Snell label and, if necessary, to the other information depending on the context of the recall. Arai states that FMVSS No. 218 does not define an objective test for the label's permanency and Arai claims that NHTSA has not generally defined the meaning of "permanently affixed" in other contexts within the safety standards themselves. Rather, NHTSA has generally dealt with the question of permanency through various legal interpretations.⁴ Further, Arai states that within the context of the labels required under FMVSS

³ The headliners are snapped into the helmet and may be removed. Arai does sell replacement headliners, which would have a sewn-in label containing the helmet thickness, the generic helmet size, and the country of origin. The liners are snapped into the helmet, and replacement headliners must have corresponding snaps. Accordingly, a size small headliner would not fit into a size MIL shell and vice versa. Arai is not aware of any third-party headliners for its helmets.

⁴ See Letter to Todd Mitchell, 19 Mar. 2001, <https://isearch.nhtsa.gov/files/22512.rbm.html> Letter to R. Mark Willingham, 1 Apr 1994; <https://isearch.nhtsa.gov/files/9640.html> (specifying precisely how the label is to be permanently affixed would be design restrictive). .

No. 208, NHTSA determined “that a label is permanent if it cannot be removed without destroying or defacing it and that the label should remain legible for the expected life of the product under normal conditions.”⁵ Based on these interpretations, Arai contends, the permanency of the label depends on the purpose of the label. For these determinations, the underlying purposes of these labeling requirements were to provide useful safety information to users over the life of the equipment or vehicle. Thus, it is understandable that “permanency” in these contexts would mean that the label could not be easily removed throughout the life of the product.

With respect to the discrete size label, Arai reiterated its argument that the label’s primary purpose is to assist NHTSA in selecting the correct headform to test a new helmet. The content of the subject labels met this primary purpose, as NHTSA was able to select the correct headform for the subject helmets. Moreover, the label did not (and would not likely have) become detached from the helmet prior to the final sale of the helmets. Indeed, removal of the label would require a deliberate act; these labels would not fall off on their own and, therefore, would remain in place at the time of any NHTSA compliance test.

Likewise, the secondary purpose of the label - to provide more precise information to consumers - would remain satisfied as, again, the label would be in place on the helmet at the time of purchase. Size information is also available to consumers on the helmet’s packaging and on a label sewn into the helmet’s headliner providing the generic size.⁶ Moreover, Arai explains, that consumers are more likely to rely on the fit of the helmet by trying it on, rather than the discrete size listed on the label. And, as noted, this labeling issue does not affect the helmet’s ability to protect the wearer in the event of a crash.

⁵ See Letter to Todd Mitchell; *see also* Letter to Tony Dosmann, 15 Apr 2005, <https://isearch.nhtsa.gov/files/GF002565.html> (stating that the rim label “must be affixed in a manner that would make it likely to stay attached and legible during the lifetime of the vehicle, under normal conditions”).

⁶ Arai’s March 28, 2019 petition erroneously stated that the label sewn into the headliner of the subject helmets included the discrete size. Further investigation revealed that the size small headliners that are used in the subject helmets do not include the discrete size information.

Arai concludes by again contending that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. Public Comment: NHTSA received one comment concerning Arai's petition, from Mr. Zach Robertson. Mr. Robertson was of the opinion that Arai's subject helmets were likely noncompliant with the letter of the regulation. He believes, however, that the helmet is mostly, if not completely, meeting the intent of the regulation since the discrete size is included on the headliner and helmet packaging and there were no performance failures during NHTSA's testing. NHTSA appreciates Mr. Robertson's input and agrees that there were no performance failures during testing but disagrees that a discrete size on the removable comfort liner (headliner) or packaging is sufficient to meet the labeling requirements since FMVSS No. 218 states the helmet shall be labeled permanently with the discrete size.

VII. NHTSA's Analysis: Discrete size labels on motorcycle helmets offer important information to consumers, sellers, testing laboratories, and regulatory entities. For NHTSA's enforcement purposes, the discrete size label provides precise information necessary to determine the appropriate headform for conducting performance testing per FMVSS No. 218. For consumers and sellers, the discrete size label provides specific information to help them determine the size of the helmet to aid them in selling or purchasing a helmet that fits properly, which is important to realizing the safety benefits a helmet offers in the event of a crash. Furthermore, the discrete size label may be useful to determine if a particular motorcycle helmet falls within the scope of a recall when a remedy campaign is being conducted. It is worth reiterating that the noncompliance in this case is not that the helmet lacked a discrete size label, but that the discrete size label was not permanent. All labels on a motorcycle helmet are required to be permanent. This permanency requirement is related to the safety of the helmet in that the

labels, including the discrete size label, provide a safety benefit for the life of the motorcycle helmet.

Arai raises several points in support of its request to be exempt from the notification and remedy requirements for this helmet. Arai believes the primary reason for NHTSA requiring the discrete size is related to enforceability of the performance tests in FMVSS No. 218 and that a label that is present on the helmet at the time of NHTSA's testing, but that may not be permanently attached to the helmet, does not expose the user of the noncompliant helmet to a "significantly greater risk" than to a user of a compliant helmet. NHTSA responds that the discrete size label has other critical roles besides enforceability of performance tests. It is important for motorcycle helmets to be labeled permanently and legibly with a discrete size in a manner that the label can be read easily without removing padding or any other permanent part for the duration of the life of the product. NHTSA disagrees with Arai's claim that the reason for requiring the helmet's discrete size is restricted to determining the appropriate headform for conducting the performance testing, and that therefore having a permanent label is not necessary. Motorcycle helmets are safety equipment and the ability of a consumer to select a well-fitting helmet is a safety goal. Arai's claim that consumers are more likely to rely on the fit of the helmet by trying it on, rather than the discrete size listed on the label is not supported by data. Additionally, a permanent discrete size label on a motorcycle helmet is important in the event a recall is filed. A recall is necessary when a motor vehicle or item of motor vehicle equipment does not comply with an FMVSS or when there is a safety-related defect in the vehicle or equipment. A motorcycle helmet with a discrete size label that is not permanent may hinder the user from being able to determine if the motorcycle helmet is part of a remedy campaign that includes a specific range of sizes.

Regarding how permanency is assessed, NHTSA has published a test procedure titled Laboratory Test Procedure for FMVSS No. 218 (TP-218-07), which explains how permanency

of the discrete size label (as well as the other required labels) is evaluated as part of its motorcycle helmet compliance program. That information follows:

OVSC compliance labs shall attempt to remove labels without tools and inspect for the following:

a) Labels according to S5.6.1(a) through (c) would be determined to be permanent if they are located in a place such that it is intended to remain there for the life of the product (i.e. not on the visor or a removable padding) and at least one of the following five conditions:

- 1) It cannot be removed without the aid of tools or solvents, or
- 2) Attached by a seam, or
- 3) Tears into at least 3 or more pieces with no single piece being larger than 50% of the total area of the label when removed, or
- 4) Removal damages the surface to which it is attached and the size of the damage is greater than 50% of the size of the label, or
- 5) Removal creates physical evidence that an affixation was originally present or required to be present. Physical evidence may include such things as adhesive residue or an area of contrasting color showing some information is missing.

The tested helmets had a discrete size label, but the label failed permanency requirements because it was removed without the aid of tools or solvents, it was not attached by a seam, it did not tear into at least 3 or more pieces, the removal did not damage the surface to which it was attached, and the removal did not create physical evidence that an affixation was originally present.

Arai stated in its petition that another label showing the discrete size of the helmet is sewn into a tag in the headliner and that the helmet's packaging provides the size information. The Arai Corsair X motorcycle helmets tested by NHTSA did not contain an additional discrete size label sewn onto a tag in the headliner (removable comfort liner). Furthermore, an additional

size label sewn onto a removable comfort liner (headliner) or placed on the packaging is not a suitable replacement for a permanent discrete size label since the removable comfort liner (headliner) is made to be exchanged for a new liner that may not contain a size label (or may have an incorrect size label), and expecting a consumer to rely on the original packaging is unrealistic since product packaging is often discarded.

Arai refers to a petition related to a noncompliance that resulted from a goggle strap potentially obscuring the DOT label of a motorcycle helmet and that NHTSA agreed that the noncompliance was inconsequential to motor vehicle safety. *See* 79 FR 47720. NHTSA responds that the agency determines whether a particular noncompliance is inconsequential to motor vehicle safety based on the specific facts of each case. NHTSA does not agree that this petition supports granting Arai's petition because the goggle strap petition does not seem related. For example, (1) the noncompliance in the case referenced by Arai resulted from a goggle strap potentially obscuring the DOT symbol which is completely unrelated to a discrete size label; (2) the issue of permanency was not examined; and (3) the purposes of the DOT symbol are significantly different than the purposes for discrete size labels. NHTSA is not persuaded to grant the Arai petition based on facts concerning the goggle strap petition (79 FR 47720).

However, Arai states, and NHTSA agrees, that the discrete label on the helmet tested by NHTSA permitted the agency to select the correct headform and that the Arai Corsair-X helmet samples tested by NHTSA met the performance standards under FMVSS No. 218. In this instance, NHTSA agrees the discrete size label non-permanency did not affect the helmet's ability to be tested in accordance with FMVSS No. 218.

The key issue in determining inconsequentiality is whether the noncompliance in question is likely to increase the safety risk to the individual persons who experience the type of injurious event against which the standard is designed to protect.

In response to Arai's statement that NHTSA tested the subject Arai Helmet under FMVSS No. 218, and that the testing "demonstrated that these helmets meet the performance

standards,” NHTSA is clarifying that testing performed on behalf of NHTSA is neither sufficient nor intended to ensure that the item tested, nor similar products, meet or exceed FMVSS. The burden to certify products and ensure every product manufactured and imported into the United States meets or exceeds all applicable FMVSS, falls squarely on the manufacturer. Arai has provided NHTSA with its basis for certification of the Arai Corsai-X motorcycle helmet.

In this specific case, the subject helmets are labeled with a unique serial number which helps satisfy the safety need associated with the discrete size being permanent. In addition to certifying its helmets to FMVSS No. 218, Arai also certifies its helmets through the Snell Foundation. Every Arai helmet is permanently labeled with a unique serialized number on a Snell label, which is cross-referenced to the helmet model, the date of manufacture, the outer shell size, the corresponding fit of the helmet, and the distributor to whom Arai sold the helmet. Arai stated that in the event of a recall, it would direct consumers to the Snell label to determine whether a specific helmet was subject to the recall.

Therefore, in this specific instance, NHTSA agrees that, because the helmet was labeled with the discrete size and had additional permanent labeling, the safety needs of consumers would be met despite the discrete size label not being permanent.

VIII. NHTSA’s Decision: In consideration of the foregoing, NHTSA finds that Arai has met its burden of persuasion that the FMVSS No. 218 noncompliance is inconsequential as it relates to motor vehicle safety. Accordingly, Arai’s petition is hereby granted, and Arai is exempted from the obligation to provide notification of and remedy for the subject noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject equipment that Arai no

longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant equipment under their control after Arai notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

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